

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 45-003-13-1-5-00215-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-18-303-024.000-003
Assessment Year: 2013

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

Procedural History

1. Petitioner initiated his 2013 appeal with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”). The PTABOA issued notice of its final determination on November 19, 2015. On January 6, 2016, Petitioner filed a Form 131 petition with the Board.
2. Petitioner elected to have the appeal heard under the Board’s small claims procedures. Respondent did not elect to have the appeal removed from those procedures.
3. Ellen Yuhan, the Administrative Law Judge (“ALJ”) appointed by the Board, held the administrative hearing on March 5, 2018. Neither the ALJ nor the Board inspected the property.
4. James Nowacki, Petitioner, was sworn and testified. Robert W. Metz and Joseph E. James, Lake County Hearing Officers, were sworn as witnesses for the Respondent.¹

Facts

5. The subject property is a vacant residential lot located at 4512 W. 26th Place in Gary.
6. For 2013, the property was assessed at \$3,100.
7. Petitioner requested an assessed value of \$2,000.

Record

8. The official record contains the following:

¹ Terrance Durousseau, Lake County Assessor’s staff member, was present but was not sworn and did not testify.

a. A digital recording of the hearing

b. Exhibits:

Respondent did not present any exhibits.

Petitioner Exhibit 1: GIS map,
Petitioner Exhibit 2: Property record card (“PRC”),

Board Exhibit A: Form 131 petition and attachments,
Board Exhibit B: Notices of hearing,
Board Exhibit C: Hearing sign-in sheet,

c. These Findings and Conclusions.

Burden

9. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that a property’s assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
10. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
11. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15,” except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).
12. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).

13. The assessed value did not change from 2012 to 2013. Petitioner, therefore, has the burden of proof.

Summary of Parties' Contentions

14. Petitioner's case:
- a. Petitioner contends the assessed value decreased from \$3,100 in 2013 to \$1,800 in 2016. Nothing about the property changed during that time period. The blighted condition and the external obsolescence have not changed significantly. Petitioner contends the property should be assessed the same in 2013 as it is in 2016. *Nowacki testimony.*
 - b. Petitioner contends the assessor does not think the information on the PRC is important. This is evident from the inaccuracies on the PRC as it does not show that that the property is inaccessible, that the neighborhood is blighted, or that there is external obsolescence. *Nowacki testimony; Pet'r Ex. 2.*
 - c. Petitioner contends properties like the subject property are constantly churned over in the assessment process. He argues that this does not help the city or facilitate private ownership in the area. He contends that the previous owner lost the subject property because she could not get the assessment corrected. *Nowacki testimony.*
 - d. Petitioner contends he has been fighting this incorrect assessment for five years. He claims that at any time during this process, the township or the PTABOA could have corrected this, but instead they did nothing. Now, five years later, the 2016 assessment has been corrected. *Nowacki testimony.*
15. Respondent's case:
- a. Mr. James agrees that the assessed value of the property was \$3,100 in 2013. He claims that the value was eventually reduced for 2016 because the property is inaccessible. He further claims that a street was platted, but never actually put in. He agrees that the property has not changed from 2013 to 2016 and he would "have no objection . . . if the Board saw fit to lower the value to be consistent with 2016." *James testimony.*

ANALYSIS

16. Petitioner failed to make a prima facie for a reduction in the assessed value. The Board reached this decision for the following reasons:
- a. Indiana assesses real property based on its true tax value, which the Department of Local Government Finance ("DLGF") has defined as the property's market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). To show a property's market value-in-

- use, a party may offer evidence that is consistent with the DLGF's definition of true tax value. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice ("USPAP") will often be probative. *Kooshtard Property VI v. White River Township Assessor*, 836 N.E.2d 501, 506 (Ind. Tax Ct. 2005). Parties may also offer evidence of actual construction costs, sales information for the property under appeal, sale or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *See Id.*; *see also*, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use).
- b. Regardless of the method used to prove a property's true tax value, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for the 2013 assessment at issue in this appeal was March 1, 2013. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
 - c. Petitioner contends the property should be assessed at \$2,000. Petitioner presented no evidence to support that value. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
 - d. Petitioner contends the appeal process is slow and tedious. However, pursuant to Ind. Code § 6-1.1-15-1(o), Petitioner had the right to appeal directly to the Board if the petition was not heard by the PTABOA within 180 days as required by Ind. Code § 6-1.1-15-1(k). Therefore, the alleged lengthy appeal process was due, in part, to the Petitioner's own inaction.
 - e. Petitioner failed to make a prima facie case for changing the assessment. However, because Respondent agreed that the subject property had not changed from 2013 to 2016, he testified that he had no objection to the 2013 value being lowered to the 2016 value of \$1,800. The Board views this testimony as a concession by Respondent that the 2013 assessment should be reduced from original amount of \$3,100 to the 2016 amount of \$1,800. The Board accepts Respondent's concession that the 2013 assessment should be reduced to \$1,800.

CONCLUSION

17. Petitioner failed to establish a prima facie case that the 2013 value is incorrect. Respondent, however, agreed the property had not changed during the relevant time period and had no objection to lowering the 2013 assessed value to the 2016 value of \$1,800. The Board accepts that concession.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines the 2013 assessed value should be changed.

ISSUED: May 31, 2018

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.